



INDIANA PESTICIDE REVIEW BOARD

Purdue University - IUPUI University Street
West Hall Suite IN 47907-2063
(765) 494-1192 • Fax (765) 494-4331

Dave Scott, Secretary

September 18, 2017

Curtis T. Hill, Jr.
Office of the Attorney General
Indiana Government Center South, Fifth Floor
402 West Washington Street
Indianapolis, IN 46204-2770

FEDEX DELIVERY

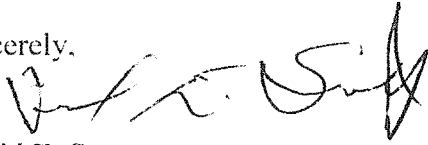
Dear Mr. Hill:

Enclosed for your review and approval are the following documents submitted for the final rule adding 357 IAC 1-17-1 (LSA #17-180).

1. Final Rule in Word on a CD-ROM.
2. Signature page.
3. Supporting documentation, including:
 - a) Printed from the Indiana Register:
 - i) Notice of Intent to Adopt a Rule
 - ii) Proposed Rule
 - iii) Economic Impact Statement
 - iv) Notice of Public Hearing
 - b) Authorization to Proceed from the Indiana Register
 - c) Publisher's affidavit and a copy of the public hearing notice published in the Indianapolis Star.
 - d) State Budget Agency approval letter.
 - e) Small Business Ombudsman(SBO) correspondence
 - i) Email transmission of Economic Impact Statement to SBO.
 - ii) Comments from OSB to the Indiana Pesticide Review Board(IPRB).
 - iii) Screen shot of IPRB web page
 - iv) IPRB response to OSB comments.
 - f) Cost Benefit Analysis, estimating economic impact on all regulated persons.
 - g) Moratorium Exception letter.
 - h) Public Hearing Summary, including written public comments.
 - i) IPRB response to public comments (NOT APPLICABLE, since submitted comments were overwhelmingly supportive of the proposed rule).
 - j) Changes from Proposed Rule to Final Rule (see Abbreviated 151st Meeting Minutes from the IPRB).
 - k) Record of action by the IPRB to adopt the rule (see Abbreviated Minutes).
 - l) Printout of the most current version (9-18-17) of the rulemaking docket.
4. Executive summary.

Since our agency is located away from the Indianapolis area, we request that the rule be delivered to the Governor's Office after your review. We greatly appreciate your assistance in expediting our request.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Scott", with a stylized flourish at the end.

David E. Scott
Secretary, Indiana Pesticide Review Board

Enclosures

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

LSA Document # 17-180(F)

Amends 357 IAC 1-17-1 to expand the list of state restricted use pesticide products to include certain herbicides containing the active ingredient dicamba. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

357 IAC 1-17-1

SECTION 1. 357 IAC 1-17-1 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-17-1 State restricted use pesticide products

Authority: IC 15-16-4-50

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. Pesticide products defined by the following categories or active ingredients are designated and classified as restricted use pesticides in the state of Indiana:

- (1) Any pesticide classified by the U.S. Environmental Protection Agency as a restricted use pesticide.
- (2) All formulations containing methomyl (Chemical Abstracts Service Reg. No. 16752-77-5).
- (3) **Any dicamba containing pesticide product that:**
 - (A) **contains a dicamba active ingredient concentration greater than or equal to six and one-half percent (6.5%); and**
 - (B) **is intended for agricultural production uses but:**
 - (i) **does not also contain 2,4-D as an active ingredient; or**
 - (ii) **is not labeled solely for use on turf or other non-agricultural use sites.** (*Indiana Pesticide Review Board; 357 IAC 1-17-1; filed Sep 11, 2012, 2:41 p.m.: 20121010-IR-357120135FRA*)

Rule Signature Page

Rule #: LSA #17-180(F)
Agency: Indiana Pesticide Review Board
Subject: Regulations re: state restricted use pesticide products

ADOPTED:

By:  Date: 4-SEP-2017
Dr. Ronald Hellenthal
Chair, Indiana Pesticide Review Board

APPROVED AS TO FORM AND LEGALITY:

By: _____ Date: _____
Curtis T. Hill, Jr.
Attorney General, State of Indiana

APPROVED:

By: _____ Date: _____
Eric J. Holcomb
Governor, State of Indiana

ACCEPTED FOR FILING:

By: _____ Date: _____
Indiana Register
Legislative Services Agency

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

Notice of Intent to Adopt a Rule
LSA Document #16-533

Under IC 4-22-2-23, the Indiana Pesticide Review Board intends to adopt a rule concerning the following:

OVERVIEW: Amends 357 IAC 1-17 to expand the list of state restricted use pesticide products to include certain herbicides containing the active ingredient dicamba. Effective 30 days after filing with the Publisher. Questions may be directed to the Small Business Regulatory Coordinator for this rule. Statutory authority: IC 15-16-4-60.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

David Scott
Secretary
Indiana Pesticide Review Board
175 South University Street
West Lafayette, IN 47907-2063
(765) 494-1593
scottde@purdue.edu

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 4-4-35-8 is:

Robert Warner
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
rwarner@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 4-4-35-8, specifically IC 4-4-35-8(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

Posted: 12/07/2016 by Legislative Services Agency
An [html](#) version of this document.

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

Proposed Rule
LSA Document #17-180

DIGEST

Amends [357 IAC 1-17-1](#) to expand the list of state restricted use pesticide products to include certain herbicides containing the active ingredient dicamba. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[357 IAC 1-17-1](#)

SECTION 1. [357 IAC 1-17-1](#) IS AMENDED TO READ AS FOLLOWS:

[357 IAC 1-17-1](#) **State restricted use pesticide products**

Authority: [IC 15-16-4-50](#)

Affected: [IC 15-16-4](#); [IC 15-16-5](#)

Sec. 1. Pesticide products defined by the following categories or active ingredients are designated and classified as restricted use pesticides in the state of Indiana:

- (1) Any pesticide classified by the U.S. Environmental Protection Agency as a restricted use pesticide.
- (2) All formulations containing methomyl (Chemical Abstracts Service Reg. No. 16752-77-5).
- (3) Any dicamba containing pesticide product bearing a label indicating the herbicide:
 - (A) contains a dicamba active ingredient concentration greater than or equal to six and one-half percent (6.5%); and
 - (B) is intended for agricultural production uses but:
 - (i) does not also contain 2,4-D as an active ingredient; or
 - (ii) is not labeled solely for use on turf or other nonagricultural use sites.

(Indiana Pesticide Review Board; [357 IAC 1-17-1](#); filed Sep 11, 2012, 2:41 p.m.: [20121010-IR-357120135FRA](#))

[Notice of Public Hearing](#)

Posted: 06/07/2017 by Legislative Services Agency

An [html](#) version of this document.

Economic Impact Statement
LSA Document #17-180

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The proposed rule will not impose requirements or costs on small businesses under IC 4-22-2.1-5. This rule will simply restrict the distribution and use of an estimated fewer than fifty agricultural herbicides containing dicamba to pesticide users and distributors already credentialed and regulated by the State Chemist. Because the requirements in this rule will apply only to higher concentration agricultural weed control products but not lower concentration turf weed control products, and because there are currently numerous alternative herbicides that could be used in place of dicamba-containing products, neither pesticide dealers and distributors nor pesticide applicators or application businesses will be impacted fiscally.

Posted: 06/07/2017 by Legislative Services Agency
An [html](#) version of this document.

Notice of Public Hearing
LSA Document #17-180

Notice of Public Hearing

Under ~~IC 4-22-2-24~~, notice is hereby given that on July 6, 2017, at 10:00 a.m., at the William H. Daniel Turfgrass Research and Diagnostic Center, 1340 Cherry Lane, West Lafayette, Indiana, the Indiana Pesticide Review Board will hold a public hearing on a proposed rule to expand the list of state restricted use pesticide products to include certain herbicides containing the active ingredient dicamba.

The proposed rule would not impose any requirements or costs under ~~IC 4-22-2-24(d)(3)~~.

Copies of this proposed rule and any data, studies, or analyses referenced in a justification of requirements or costs on regulated entities are available to be inspected and copied at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, West Lafayette, Indiana or at:

http://www.oisc.purdue.edu/oisc_rules_regs_laws.html

David Scott
Secretary
Indiana Pesticide Review Board

Posted: 06/07/2017 by Legislative Services Agency
An ~~html~~ version of this document.

Scott, David E

From: Indiana Register <register@iga.in.gov>
Sent: Wednesday, May 24, 2017 3:08 PM
To: Scott, David E
Cc: Robison, Donald B
Subject: AUTHORIZATION TO PROCEED -- RE: LSA#17-180 June 6, 2017

AUTHORIZATION TO PROCEED

This document is the authorization to proceed as required under IC 4-2.2-2-24(g).

The intended date for publication of LSA Document #17-180 is June 21, 2017. Please include this authorization to proceed with the documents submitted to the Attorney General under IC 4-2.2-2-31.

Legislative Services Agency
Indiana Register and Administrative Code Division
Indiana Government Center North
100 N. Senate Ave., Room N201
Indianapolis, IN 46204
(317) 232-9557
Register@iga.in.gov

The Indianapolis Star

130 South Meridian Street
Indianapolis, IN 46225
Marion County, Indiana

OFFICE OF THE IND STATE CHEMIS

Federal Id: 06-1032273

Account #:INI-3106

Order #:0002168246

Total Amount of Claim:\$39.54

Please Mail Payments To: The Indianapolis Star - 130 South Meridian Street - Indianapolis, IN 46225

OFFICE OF THE IND STATE CHEMIS
ATTN DAVID SCOTT
175 S UNIVERSITY ST
WEST LAFAYETTE, IN 47907

PUBLISHER'S AFFIDAVIT

STATE OF INDIANA,
County Of Marion

} SS:

Personally appeared before me, a notary public in and for said county and state, the undersigned

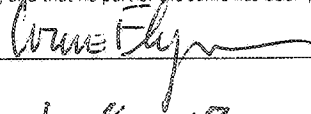
I, being duly sworn, say that I am a clerk for **THE INDIANAPOLIS NEWSPAPERS** a **DAILY STAR** newspaper of general circulation printed and published in the English language in the city of **INDIANAPOLIS** in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 1 times., the dates of publication being as follows:

The insertion being on the 06/08/2017


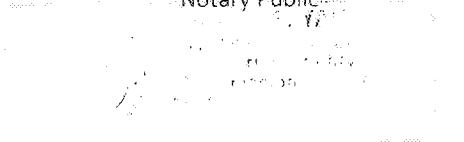
Newspaper has a website and this public notice was posted in the same day as it was published in the newspaper.

Pursuant to the provisions and penalties of Ch. 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.


Date: 6-8, 2017 Title: Clerk

Subscribed and sworn to before me this 8 day of June, 2017


Notary Public


RECEIVED

JUN 12 2017

INDIANA STATE CHEMIST

ED_005172C_00002041-00010

(Governmental Unit)

To: INDIANAPOLIS STAR

County, Indiana

Indianapolis, IN

PUBLISHER'S CLAIM

COMPUTATION OF CHARGES

Acct #: INI 3106
Ad #: 0002168246

34 lines, 2 columns wide equals 68 equivalent
lines at \$0.58 per line @ 1 days. \$39.54

Website Publication \$0

Charge for proof(s) of publication \$6.00

TOTAL AMOUNT OF CLAIM \$39.54

DATA FOR COMPUTING COST

Width of single column 9.5 ems
Number of insertions 1
Size of type 7 point

Claim No. _____ Warrant No. _____
IN FAVOR OF
The Indianapolis Star
Indianapolis, IN
Marion County
130 S. Meridian St. Indianapolis, IN 46225

I have examined the within claim and hereby
certify
as follows:

That it is in proper form.

This it is duly authenticated as required by law.

That it is based upon statutory authority.

That it is apparently (correct)

\$ _____

On Account of Appropriation For

FED. ID

#06-1032273

Allowed _____, 20____

In the sum of \$ _____

I certify that the within claim is true and correct; that the
services therein itemized and for which charge is made were
ordered by me and were necessary to the public business.

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

Notice of Public Hearing

LSA Document #17-180

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 6, 2017, at 10:00 a.m., at the William H. Daniel Turfgrass Research and Diagnostic Center, 1340 Cherry Lane, West Lafayette, Indiana, the Indiana Pesticide Review Board will hold a public hearing on a proposed rule to expand the list of state restricted use pesticide products to include certain herbicides containing the active ingredient dicamba.

The proposed rule would not impose any requirements or costs under IC 4-22-2-24(d)(3).

Copies of this proposed rule and any data, studies, or analyses referenced in a justification of requirements or costs on regulated entities are available to be inspected and copied at the Office of the Indiana State Chemist, Purdue University, 175 South University Street, West Lafayette, Indiana or at

http://www.oisc.purdue.edu/oisc_rules_regs_laws.html.

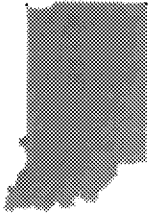
David Scott

Secretary

Indiana Pesticide Review Board

(S - 6/5/17 - 0002168246)

hspaxlp



STATE OF INDIANA

Eric J. Holcomb
Governor

STATE BUDGET AGENCY
212 State House
Indianapolis, Indiana 46204-2796
317-232-5610

Jason D. Dudich
Director

May 19, 2017

David E. Scott
Indiana Pesticide Review Board
Purdue University
175 S. University St.
West Lafayette, IN 47907

Dear Mr. Scott,

Pursuant to the provisions of Executive Order 2-89 and Budget Agency Financial Management Circular 2010-4, the State Budget Agency has reviewed the proposed rule that amends 357 IAC 1-17-1 (LSA #17-180), which you submitted to the State Budget Agency on April 12, 2017. After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.

Furthermore, the statement and analysis (attached hereto) provided by the Indiana Pesticide Review Board is hereby adopted as the Office of Management and Budget's own Fiscal Impact Statement for the purpose of satisfying the requirements under IC 4-22-2-28(d). Also, it is adopted as the Office of Management and Budget's cost benefit analysis under IC 4-3-22-13(a).

If you have questions concerning this action, please contact your budget analyst or SBA at 232-5610.

Sincerely,

Jason D. Dudich
Director

JDD/ajb

Scott, David E

From: Scott, David E
Sent: Tuesday, June 06, 2017 11:09 AM
To: 'kblankenship@iedc.in.gov'
Subject: LSA#17-180
Attachments: LSA#17-180 proposed rule.docx; LSA#17-180 economic impact statement.doc

Ms. Colclazier,

Please find the attached copies of the Economic Impact Statement and the Proposed Rule (LSA#17-180) scheduled for publication in the Indiana Register on June 7, 2017. Please let me know if you have questions.

Proposed and Current Rules, Regulations & Laws involving the Office of Indiana State Chemist

NOTE: Many of the documents on this site are in PDF format and require that you have the Adobe Reader installed to view them. The Adobe Reader is free and available from the [Adobe website \(http://get.adobe.com/reader/otherversions/\)](http://get.adobe.com/reader/otherversions/). The rest of the documents are located on the [www.in.gov \(http://www.in.gov\)](http://www.in.gov) website. Please scroll down to see rules and regulations for individual departments, or use the following links to jump to the individual sections: [Pesticide Section \(#pestlaws\)](#), [Animal Feed and Pet Food Section \(#feedlaws\)](#), [Fertilizer Section \(#fertlaws\)](#), [Seed Section \(#seedlaws\)](#).

Anticipated Timeline for Adopting Rules

STEP 1:

- Post Notice of Intent to Adopt a Rule

STEP 2:

- Receive State Budget Agency Approval

STEP 3:

- Post Draft Rule
- Post Small Business Economic Impact Statement
- Post Cost Benefit Analysis
- Post Fiscal Impact Analysis on State and Local Government
- Post Notice of Public Hearing (includes the date, time and location of hearing)
- Post e-mail address for submitting comments
- Open webpage with public comments for viewing

STEP 4:

- Receive and post IEDC (Indiana Economic Development Corporation) response

STEP 5:

- Hold Public Hearing
- Open comments submission

STEP 6 (final):

- Submission of final packet to Attorney General
- Attorney General approves and submits to Governor
- LSA (Legislative Services Agency) chooses the date the rule is published
- List the final rule

(P)PESTICIDE SECTION

Current Laws:

- [IC 15-16-4 \(/pesticide/pdf/15-16-4.pdf\)](#) : Pesticide Review Board; Product Registration & Distribution (pdf, 158kb)
- [IC 15-16-5 \(/pesticide/pdf/15-16-5.pdf\)](#) : Applicator & Dealer Certification & Licensing; Use & Application Requirements (pdf, 153kb)
 - View the [Table of Contents for these Laws \(/pesticide/pest-law_toc.html\)](#) (Chrome users take note: opening these pdf documents in Chrome overrides the ability to use the Table of Contents feature. Chrome users will need to right-click and "save as" to use the Table of Contents feature.)

Current Rules:

- [385 IAC 4-0.5-1 Article 4 \(http://www.in.gov/legislative/iac/T03550/A00040.pdf\)](#) : Pesticide Use and Application [Certification & Licensing] (pdf, source: www.in.gov)
- [386 IAC 5-1-1 Article 5 \(http://www.in.gov/legislative/iac/T03550/A00050.pdf\)](#) : Storage and Secondary Containment of Pesticides [Bulk Pesticide Storage and Containment] (pdf, source: www.in.gov)
- [Title 357 Article 1 \(http://www.in.gov/legislative/iac/T03570/A00010.pdf\)](#) : Indiana Pesticide Review Board [Definition; Use of Pesticides] (pdf, source: www.in.gov)
 - View the [Table of Contents for these Rules \(/pesticide/pest-rule_toc.html\)](#) (Chrome users take note: opening these pdf documents in Chrome overrides the ability to use the Table of Contents feature. Chrome users will need to right-click and "save as" to use the Table of Contents feature.)
- [357 IAC 1-12 \(/pesticide/pdf/drift_rule.pdf\)](#) : Indiana Pesticide Drift Rule (pdf, 10kb)

Proposed (Restricted Use Classification of Dicamba Containing Herbicides):

- [Notice of Intent to Adopt a Rule \(LSA#17-180\) \(/pesticide/pdf/lsa_17-180_notice_of_intent.pdf\)](#) (pdf, 7kb)
- [Receive State Budget Agency Approval - LSA#17-180 \(/pesticide/pdf/lsa_17-180_sba_approval.pdf\)](#) (pdf, 410kb)
- [Proposed Rule: Restricted Use Classification of Dicamba Containing Herbicides \(/pesticide/pdf/lsa_17-180_proposed_rule.pdf\)](#) (pdf, 8kb)



- [Cost Benefit Analysis \(/pesticide/pdf/lsa_17-180_cost_benefit_analysis.pdf\)](#) (pdf, 27kb)
- [Fiscal Impact Analysis on State and Local Government \(/pesticide/pdf/lsa_17-180_fiscal_impact.pdf\)](#) (pdf, 7kb)
- [Notice of Public Hearing \(/pesticide/pdf/lsa_17-180_notice_of_public_hearing.pdf\)](#) (pdf, 7kb) (NOTE: The public hearing written comment period will remain open through August 18, 2017)
- [Review of Economic Impact Statement by Indiana Economic Development Corporation \(/pesticide/pdf/lsa_17-180_iedc_support_letter.pdf\)](#) (IEDC) (pdf, 209kb)
- [IDRB response to IEDC review \(/pesticide/pdf/lsa_17-180_response_to_iedc.pdf\)](#) (pdf, 269kb)
- Submit comments on the proposed rule to David Scott at scottd@purdue.edu (mailto:scottd@purdue.edu) (NOTE: The public hearing written comment period will remain open through August 18, 2017)
- Public comments submitted can be viewed [HERE \(comments.html\)](#) (NOTE: The public hearing written comment period will remain open through August 18, 2017)
- [LSA#17-180 Draft Hearing Summary \(pesticide/pdf/lsa_17-180_draft_hearing_summary.pdf\)](#) (pdf, 1,463kb)

Proposed (Exempting Some Antimicrobial End Users from Some Bulk Storage and Containment Requirements):

- [Notice of Intent to Adopt a Rule \(pesticide/pdf/lsa_17-351_notice_of_intent_to_adopt.pdf\)](#) (LSA #17-351) (pdf, 7kb)

Proposed (Re-adoption of Pesticide Civil Penalty Rule):

- [Notice of Intent to Re-adopt a Rule \(pesticide/pdf/lsa_17-359_notice_of_intent_to_readopt.pdf\)](#) (LSA #17-359) (pdf, 24kb)

(F)FEED & PET FOOD SECTION

Current Law:

- [IC 15-19-7 \(/feed/pdf/15-19-7.pdf\)](#) : Indiana Commercial Feed Law (pdf, 127kb)

Current Rule:

- [355 IAC Article 8 \(http://www.in.gov/legislative/iac/T03550/A00060.PDF\)](#) : Animal Foods Rules & Regulations (pdf, source: www.in.gov)

Proposed:

- None at this time

(F)FERTILIZER SECTION

Current Laws:

- [IC 15-16-1 \(/fertilizer/pdf/15-16-1.pdf\)](#) : Indiana Agriculture Ammonia Law (pdf, 70kb)
- [IC 15-16-2 \(/fertilizer/pdf/15-16-2.pdf\)](#) : Indiana Commercial Fertilizer Law (pdf, 112kb)
- [IC 15-16-3 \(/fertilizer/pdf/15-16-3.pdf\)](#) : Indiana Commercial Lawn Care Service Law (pdf, 66kb)

Current Rules:

- [355 IAC Article 2 \(http://www.in.gov/legislative/iac/T03550/A00020.PDF\)](#) : Indiana Commercial Fertilizer Rules (pdf, source: www.in.gov)
- [355 IAC Article 3 \(http://www.in.gov/legislative/iac/T03550/A00030.pdf\)](#) : Indiana Agriculture Ammonia Rules (pdf, source: www.in.gov)
- [355 IAC Article 7 \(http://www.in.gov/legislative/iac/T03550/A00070.PDF\)](#) : Certification for Distributors and Users of Fertilizer Material (pdf, source: www.in.gov)
- [355 IAC Article 8 \(http://www.in.gov/legislative/iac/T03550/A00080.PDF\)](#) : Fertilizer Material Use, Distribution and Recordkeeping (pdf, source: www.in.gov)
- [355 IAC Article 9 \(http://www.in.gov/legislative/iac/T03550/A00090.pdf\)](#) : Indiana Fertilizer Civil Penalty Schedule (pdf, source: www.in.gov)

Proposed:

- **Notice of Intent to Readopt a Rule:**
[LSA #16-127 \(/fertilizer/pdf/lsa_16-127.pdf\)](#) (355 IAC 7): Certification for Distributors and Users of Fertilizer Materials (pdf, 10kb)
- **Notice of Intent to Readopt a Rule:**
[LSA # 16-128 \(/fertilizer/pdf/lsa_16-128.pdf\)](#) (355 IAC 9): Fertilizer Civil Penalty Schedule (pdf, 10kb)

(F)SEED SECTION

Current Laws:



- [IC 15-15-1 Article 15, Ch. 1 \(/seed/pdf/15-15-1.pdf\)](#) : Indiana Seed Law (pdf, 136kb)
- [IC 15-15-2 Article 15, Ch. 2 \(/seed/pdf/15-15-2.pdf\)](#) : Indiana Plant Growth Substances Law (pdf, 59kb)
- [IC 15-15-5 Article 15, Ch. 5 \(/seed/pdf/15-15-5.pdf\)](#) : Indiana Seed Arbitration Law (pdf, 78kb)
- [IC 15-15-7 Article 15, Ch. 7 \(/seed/pdf/15-15-7.pdf\)](#) : Inspections Under Seed Contracts Law (pdf, 60kb)
- [IC 15-15-13 Article 15, Sec. 1 \(/seed/pdf/15-15-13.pdf\)](#) : Indiana Industrial Hemp Act (pdf, 71kb)

Current Rule:

- [Title 360 Article 1 \(http://www.in.gov/legislative/iac/iac_title?iact=360\)](#) : Indiana Seed Rules (pdf, source: www.in.gov)

Proposed:

- None at this time





INDIANA PESTICIDE REVIEW BOARD

Purdue University - 175 S. University Street
West Lafayette, IN 47907-2063
(765) 494-1492 - Fax (765) 494-4311

Dave Scott, Secretary

June 8, 2017

VIA EMAIL

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
kcolclazier@iedc.in.gov

Re: LSA #17-180/ Economic Impact Statement

Dear Ms. Colclazier:

This is to acknowledge receipt of your letter dated June 7, 2017 regarding the Indiana Economic Development Corporation's review of the economic impact analysis for small businesses associated with the rule changes proposed by the Indiana Pesticide Review Board contained in **LSA Document #17-180**. The Board appreciates your concurrence that small businesses will not be appreciably impacted by the proposed rule.

Questions may be directed to me at (765) 494-1593 or scottde@purdue.edu.

Sincerely,

David E. Scott
Secretary
Indiana Pesticide Review Board

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

Cost Benefit Analysis LSA Document #17-180

Estimated Number of Businesses Subject to this Rule:

The Indiana Pesticide Review Board (IPRB) estimates that 550 registered Restricted Use Pesticide (RUP) dealers, 680 commercial licensed agricultural pesticide application businesses, and 12,000 licensed agricultural pesticide applicators (soybean growers) could be subject to this rule. In addition, another estimated 50 farm center retail outlets that are currently not registered as RUP dealers but may sell or distribute dicamba containing herbicides may be impacted by this rule to some degree.

The higher concentration dicamba herbicide containing products impacted by this rule are typically sold by farm store retailers or registered Restricted Use Pesticide (RUP) dealers. The registered pesticide dealers are already in compliance with the restricted use pesticide sales requirements, so they would incur no additional regulatory burden if they choose to continue to handle these products. Some farm store retailers are currently not registered restricted use pesticide dealers, but they can avoid regulatory impact by simply offering for sale any of the other many currently registered and similarly priced herbicides intended to control the same weeds.

All commercial licensed pesticide application businesses and the applicators they employ are already required by state law to be certified and licensed to handle and apply dicamba containing herbicides. Therefore, the reclassification of these herbicides from non-restricted to restricted should result in no additional regulatory burden for these businesses.

Likewise, most if not all soybean growers that apply their own pesticides are already in compliance with the state certification and licensing requirements to purchase and apply these herbicides. Specifically, most of these applicators currently handle and apply other RUPs in their farming operations, so no additional certification would be required. Therefore, these applicators should not realize any new regulatory burden from this rule revision.

Estimated Average Annual Administrative Costs:

Administrative costs for mainstream dicamba herbicide distributing dealers should be very minimal. Dealers of RUPs are required to keep records of sales and distribution to certified end users (applicators), but those are recordkeeping mechanisms that are already in place. In addition, most dealers currently keep records of their non-restricted pesticide sales for their own purposes, so this administrative requirement should be absorbed into the existing system without discernable cost.

For any dealers who are not already registered as RUP dealers, the cost of an annual permit to sell RUPs to end users is \$45.00. Based on the experience of the Office of Indiana State Chemist (OISC), the state pesticide regulatory agency, it is estimated that fewer than fifty farm stores may choose to become registered RUP dealers. Fifty dealers at \$45.00 per year would total \$2250.

Relative to the administrative regulatory costs for implementation, OISC does not anticipate incurring any new measureable administrative burden as the result of this rule

revision. There are adequate OISC staff and resources available to absorb any routine costs associated with the additional estimated fifty or fewer regulated dealers. Inspections needed to insure compliance with the rule will be conducted by existing field staff through a reprioritization of inspection activities. By contrast, however, it is projected that failure to implement adequate regulatory measures to address expanded dicamba use scenarios could very well result in a significant increase in the need for off-target drift investigation response resources from OISC. It is estimated that the current costs of conducting off-target drift investigations range from \$2,500 to \$3,000 per investigation, if the investigation findings are accepted by all parties and not contested. If OISC were required to conduct an additional 200 drift investigations just for dicamba misuse, as has been the case in at least one other state, the additional regulatory price tag could total \$500,000 to \$600,000. And that figure does not include the cost of off-target property damage to Indiana consumers.

Estimated Total Annual Economic Impact:

It is estimated that total annual economic impact of implementing this rule would be less than \$100,000 because the use and distribution of these herbicides would be conducted by individuals and businesses that are already in compliance with the proposed regulatory requirements and the regulatory program and resources needed for oversight are already in place for this proactive strategy. As described elsewhere in this document, the cost of not acting proactively is projected to result in damages and economic losses to agricultural growers and other consumers that could be hundreds of times greater.

Supporting Data, Studies, and Analyses:

The Board examined and considered the following data sets and heard the following testimony in determining the need for this rule:

- 1) The IPRB has been discussing the possibility of the new uses of dicamba herbicides that have prompted this rule revision since 2007, when dicamba tolerant soybean technology development first came to their attention. Discussions, updates, and presentations have occurred continuously at over half of the IPRB quarterly public meetings since that time. Testimony has been provided by commercial Indiana tomato growers, commercial Indiana grape growers, university scientists, dicamba herbicide manufacturers, commercial pesticide applicators, private pesticide applicators (growers), public representatives, and state pesticide regulators.
- 2) Dicamba tolerant soybean seed technology has been approved for planting by the USDA and will become widely available to Indiana growers in 2017.
- 3) Red Gold, a Midwestern commercial tomato grower operating in Indiana, reported on the economic losses suffered to over 8,000 acres of non-target Indiana tomatoes during 2007 when a similar herbicide tolerant seed technology was introduced. The herbicide causing the 2007 off-target damage is one that is considerably less active on sensitive crops, like tomatoes, than dicamba will be.
- 4) University researchers and soybean growers testified on the growing need for effective weed control options to address the rapid emergence of economically devastating weeds that have grown resistant to other conventional herbicides.

- 5) U.S. EPA approved a dicamba-containing herbicide for use on tolerant soybeans in November, 2016. However, non-tolerant soybeans are still quite sensitive to off-target movement of dicamba. It is unclear the extent to which tolerant and non-tolerant varieties of soybeans will be planted in close proximity to one another, putting the non-tolerant varieties at risk.
- 6) The label directions and restrictions for the recently EPA-approved dicamba soybean herbicide products are quite complex and different from most existing herbicide product labels, making safe and legal use by non-trained and non-certified applicators unlikely.
- 7) U.S. EPA issued a Compliance Advisory in August 2016 regarding the extremely high number of reports of off-target crop damage resulting from the use and misuse of dicamba herbicides applied on dicamba tolerant soybeans.
- 8) Numerous surveyed states reported incidents of dicamba misuse on tolerant soybeans and resulting off-target damage during 2016, the first year of the limited commercial release of the tolerant seed technology. The most extensive misuse and damage complaints for 2016 came from Missouri, which provided preliminary reports of 226 complaint investigations by the state pesticide regulatory agency, involving 62 different herbicide applicators, over 300 environmental residue samples, and non-target damage to 39,000 acres of soybeans, 575 tomato plants, 990 acres of cotton, 650 acres of peaches, 400 acres of peas, 200 acres of peanuts, 10 acres of watermelons, 9 acres of cantaloupes, 6 acres of alfalfa, and numerous residential gardens and ornamental plantings.
- 9) OISC testified to the IPRB that with no regulatory controls to monitor who may be distributing and applying dicamba herbicides, effective investigation of consumer complaints and claims of off-target damage, and realistically assigning responsibility for that damage may not be possible.

Regulatory Flexibility Analysis of Alternative Methods:

The IPRB has studied other potential remedies and methods to address the issue of dicamba herbicide misuse and off-target damage, including the following:

- 1) Deny the application for registration of this new dicamba use on tolerant soybeans in Indiana, regardless of the potential benefits of this herbicide to some soybean growers. It was thought that this might place Indiana soybean growers at a competitive disadvantage with other U.S. soybean growers who would have access to this weed control tool. In addition, as demonstrated in other states in 2016, not having a dicamba product registered for use on soybeans has not prevented some growers from intentionally misusing other dicamba products on the tolerant soybeans that are already in channels of trade.
- 2) Encourage voluntary attendance by potential dicamba users at training and educational sessions designed to explain the potential hazards and the complex label restrictions of this new dicamba use. With no mechanism to identify users and insure and track their participation in the training, it was felt that this option

would probably reach only those applicators who are already the more conscientious and progressive segments of the industry. Those applicators that should be targeted for training may not be part of the current regulated community, so would not benefit from this non-documentable voluntary approach.

- 3) Develop dicamba risk mitigation rules for application above and beyond those already on the overly complex label approved by U.S. EPA. Such measures could include geographic restrictions, extended buffer area requirements near sensitive areas, more restrictive wind speed limits during applications, and application timing and use date restrictions. Because it is unclear at this point whether the current risk mitigation restrictions on the label will be adequate or not, it is probably premature to prescribe additional unproven protective measures on top of those. In addition, development of scientifically vetted and practical risk mitigation measures would require both considerable time and resources to develop.
- 4) Seek a special local need registration (FIFRA Sec. 24C) from U.S. EPA to require training for anyone who uses the new soybean use dicamba product. Researching this option with EPA has led the IPRB to understand that such a restriction would not meet the legislative intent of section 24 of FIFRA and would be discouraged. In addition, such a requirement would be very difficult to implement if there was not a reasonable mechanism to also monitor the distribution process and identify the actual users of the product. And again, targeting only the limited number of dicamba products approved for this use would not address the intentional misuse of other dicamba herbicides not labeled for this use.

Explanation of Preliminary Determination:

The IPRB made a determination that the rule was necessary for public and environmental safety and property damage protection of agricultural growers and others. As explained throughout this document, dicamba is a very effective herbicide in controlling certain troublesome and yield reducing weeds in soybeans. However, it is also a very active herbicide that can cause considerable damage to sensitive crops and ornamental plantings when even low-levels of the herbicide drift and move off target during application or volatilize and move off target after application. The IPRB determined that failure to institute proactive regulatory controls would likely result in significant unintended negative consequences once dicamba use became widespread throughout Indiana. The IPRB also determined that some form of regulatory oversight and reassurances were necessary to preserve the continued availability of this weed control technology for years to come. Building on an existing regulatory structure that allows for tracking distribution and use only by trained and monitored pesticide users is the most responsible and cost-effective approach.

Summary Analysis:

As proposed, the only dicamba-containing herbicides impacted by this classification would be dicamba products intended for agricultural use. All low active ingredient level dicamba herbicides labeled for home, turf, and right-of-way use would not be impacted.

The ag dicamba herbicides being classified as Restricted Use Pesticides would restrict sale and use of those products to certified and licensed applicators only. Under current

Indiana law, any pesticide (general use or restricted use) applied commercially for-hire is required to be applied by a certified and licensed applicator. Therefore, any growers/producers who are currently hiring commercial applicators to apply pesticides to their farm ground would not be impacted by this restriction. Those applicators are already in compliance with the proposed classification change requirement.

For those corn and soybean farmers who apply their own pesticides to their own farm ground rather than hire a commercial applicator to do it for them, it is projected that the overwhelming majority of those farmers are also already certified and licensed to apply Restricted Use Pesticides. Most corn acres in Indiana require at least some atrazine herbicide or other Restricted Use Pesticides be applied at some point for weed control. Therefore, for the do-it-yourself farmer applicator, they too are already in compliance with the regulatory requirements to purchase and use dicamba. So the only anticipated restriction of use resulting from this proposal would be to the farmer/grower who has received absolutely no training and competency measurement in the safe handling and use of pesticides. If a farmer/grower elects not to utilize this one herbicide option for weed control, it will be based on alternative weed management strategies and safety concerns rather than regulatory unavailability.

In the early 1980s dicamba herbicides were introduced to agriculture in Indiana. Applicators came to realize after a few short seasons of use that the potential for this product to drift or volatilize (vaporize and move hours or days after application) off-site and cause considerable non-target crop, garden and ornamental vegetation damage, even at very low levels. Dicamba is a very active herbicide. Even a little bit of it in the wrong place caused economic loss. As a result, Indiana applicators moved away from the use of dicamba and sought out other herbicide options. With the introduction of new GMO dicamba tolerant soybeans last year, the incentive to return to the use dicamba to control weeds that have grown resistant to other herbicides has returned. And before the U.S. EPA could even register new formulations of dicamba intended to be used with these new tolerant soybeans, farmers from other states (AR, MO, TN, IL) showed a willingness to use older labeled dicamba products illegally on these new tolerant soybeans. Enormous economic losses from drift and volatilization to other high value crops and ornamentals occurred, resulting in heated farmer on farmer and homeowner on farmer disputes, that escalated in at least one case to homicide of an impacted farmer neighbor.

Adding dicamba to the RUP list will provide several benefits:

- a) Only trained and competent applicators will be able to purchase and use it. It is our experience that most regulated applicators will follow the rules and make safe applications when they are aware of the hazards.
- b) It will allow for continual outreach and communication between trainers, educators, regulators, and applicators. If applicators are not certified, there is no effective way to identify them and get the special training and outreach to them to avoid the unintended consequences of off-target drift and volatilization of this highly active herbicide.
- c) It will keep older labeled dicamba out of the hands of applicators who purchase it for the intended purpose of using it illegally on the tolerant soybeans. Older labeled products are more prone to drift and volatilize than newer legal formulations.
- d) It will create a regulatory structure that will allow OISC to have a better chance to document illegal dicamba uses and identify applicators who are responsible for off-target damage to crops and properties.

- e) It will allow for preventative action to protect crops and property rather than strictly reactionary measures with limited or no regulatory relief being provide to injured Indiana citizens.



STATE OF INDIANA

Eric J. Holcomb
Governor

OFFICE OF MANAGEMENT & BUDGET

212 State House
Indianapolis, Indiana 46204-2796
317-232-5610

Micah G. Vincent
Director

April 4, 2017

David E. Scott
Secretary
Indiana Pesticide Review Board
Purdue University
175 S. University St.
West Lafayette, IN 47907

Dear Mr. Scott,

On December 12, 2016, OMB received your submission attached hereto seeking a determination whether the Indiana Pesticide Review Board's request to amend 357 IAC 1-17 regarding dicamba falls within an exception of Executive Order 13-03.

Based on IPRB's submission, the request qualifies for an exception under paragraph 6(g) of Executive Order 13-03. Therefore, IPRB may proceed with the rule proposed in its December 12, 2016 submission.

Sincerely,

Micah G. Vincent
OMB Director

SUMMARY OF PUBLIC HEARING

Proposed Rule
LSA #17-180

357 IAC 1-17-1

References:

LSA Document #17-180, DIN: 20170607-IR-357170180PRA; June 7, 2017

Time and Place of Hearing:

July 6, 2017, 10:05 to 10:16 A.M., at the William H. Daniel Turfgrass Research and Diagnostic Center, 1340 Cherry Lane, West Lafayette, Indiana.

Place and Date of Hearing Notice:

Indianapolis Star and News, June 8, 2017

Summary of Hearing:

The proposed rule and all data, studies, or analyses referenced in the justification of requirements or costs on regulated entities were available for inspection and copying at the public hearing.

All documents associated with the publication and promulgation of this rule have also been posted on the Office of Indiana State Chemist web site at http://www.isco.purdue.edu/oisc_rules_regs_laws.html as they were created or published.

There were twelve people in attendance at the hearing. The attendance sign in sheet is attached.

Oral and written comments were made by individuals in attendance at the hearing or were submitted to the public hearing record, which remained open for comment through August 29, 2017, the day before the vote by the Indiana Pesticide Review Board to adopt the final rule was taken. Both oral and written comments are provided below.

1. Mark Shublak, Agribusiness Council of Indiana (ACI), commented that this rule will impact growers that are not already certified; they support training and education; acknowledges many misuse and off-target damage incidents in several other states, but the proper use and incident record for Indiana is still incomplete; EPA has evaluated the product and determined it to be non-restricted so ACI recommends first verifying that a problem will occur before making these products restricted to use by certified applicators only; pleased that the hearing record will remain open through July 31, 2017 to allow for more incident data collection; if rule does proceed, ACI recommends that only older formulations of dicamba products be classified restricted, leaving the newer formulations as non-restricted products; will submit written comments for the record prior to July 31, 2017.

2. Steve Smith, Red Gold, Inc. and Save Our Crops Coalition, fully supports all provisions of this proposed rule, at a minimum, as a very necessary protective measure of sensitive non-target crops and sites; other states have already taken this step and more; additional protective measures may be required; use of this pesticide chemistry requires a higher degree of care and caution than many others; already seeing considerable off-target exposure symptoms in Indiana this year, in spite of the delayed 2017 growing season; more problems are sure to follow; OISC's ability to track and document who is purchasing and using these products and may have responsibility for off-target movement is necessary; fully supports this rule as a beginning to protect all Indiana agriculture.
3. Ten written comments filed at the public hearing or prior to the hearing record closure on August 29, 2017 are attached. The commenters are overwhelmingly supportive of this proposed rule. The Agribusiness Council of Indiana, alone, commented that the Indiana Pesticide Review Board may be acting hastily by proposing the rule at this time without evidence of a problem in Indiana. Since the time of the filing of the Council's comments, an unprecedented number of dicamba herbicide off-target movement damage complaints (121) have been filed with the Office of Indiana State Chemist. There have also been suggestions that up to ten times as many dicamba damage incidents may have occurred in Indiana but have gone unreported to government officials. In addition, based on the explosion of dicamba complaints nationwide, the U.S. Environmental Protection Agency has initiated an emergency review and re-evaluation of dicamba use at a federal level. Therefore, the Board has concluded that the proposed regulatory action, at a minimum, is necessary to prevent extensive dicamba herbicide misuse and damage during the 2018 crop growing season.

Hearing Officer

A handwritten signature in black ink, appearing to read "David E. Scott", is written over a horizontal line.

David E. Scott, Secretary, Indiana Pesticide Review Board

July 6, 2017
Public Hearing for Proposed Rule LSA#17-180
William Daniel Turf Center
1340 Cherry Lane, West Lafayette, Indiana 47906

ATTENDANCE SIGN IN SHEET

	<u>Name</u>	<u>Representing</u>	<u>Telephone</u>
1.	DAVID SCOTT	IPRB	SCOTTAE@PURDUE.EDU
2.	Steve Smith	Redgold	ssmith@redgold.com
3.	Tom Schmitt	Monsanto	tom.schmitt@monsanto.com
4.	MARK SHUBANK	MSI	Mark.Shubank@msi.com
5.	Kate Gluck	ATI	Kate.gluck@emiller.com
6.	Sarah Catten	CISC	scatten@purdue.edu
7.	Carol Leach	CISC	leach13@purdue.edu
8.	Kate Nelson	ISDA	KaNelson@isda.gov
9.	Bob Wozniak	CISC	rwozniak@purdue.edu
10.	John Baugh	Purdue CCA	
11.	Cress Hizer	Syngenta	chizer@wag.biz
12.	Karen Mitchell	Purdue Ext.	mitchika@purdue.edu
13.			
14.			
15.			
16.			
17.			

July 5, 2017

Dave Scott
Secretary
Indiana Pesticide Review Board

RE: Proposed Rule #17-180, Restricted Use Pesticides

On behalf of the members of Indiana Farm Bureau, I am pleased to submit these comments in support of the proposed rule to list certain herbicides containing dicamba as restricted use pesticides. This proposal is an appropriate and responsible step to address concerns created through the incorrect use of herbicides containing the active ingredient dicamba, which may move to off-target areas and harm non-tolerant crops.

The development of dicamba tolerant crops is an important step in the ongoing struggle to address herbicide resistance in weeds. Our members know that access to a diverse portfolio of herbicides is critical to weed management and provides the flexibility needed to maintain conservation tillage systems and economically viable crop production. It is with this in mind that we support the proposed rule.

It is clear, based upon a review of the proposed rule language and products available on the market, that this rule is targeted to those situations in which dicamba would be used in an agricultural setting on farm fields. The vast majority of farmers are already licensed by the Office of the Indiana State Chemist so they can apply restricted use pesticides. Adding dicamba containing products to the RUP list will not have a negative impact on farmers. To the contrary, we believe this is a positive step in that it will help ensure that dicamba can remain a vital product for use in post-emergence settings.

Additionally, our experience has been that steps like the one proposed are generally accompanied by a focused education effort provided by OISC and Purdue University to educate farmers about the appropriate use of the pesticide. In this case, we believe that continuing education on the proper use of dicamba as one of the programs used to meet educational requirements for licensed farmers will provide additional benefit for the proper use of the product and better weed management overall.

Unfortunately, incidences in other states have forced Indiana to take this step to ensure that dicamba is appropriately applied. We believe that this proposal will allow the OISC to respond to and resolve complaints. We understand that alternatives such as imposition of much higher fines for improper use or outright bans on certain products are a possibility if this effort fails. We believe that making dicamba a restricted use pesticide will address the issue. However, if challenges persist, we commit to working with the OISC and the Pesticide Review Board to address the issue.

Questions regarding these comments may be directed to the undersigned.

Respectfully submitted,



Justin T. Schneider
Director, State Government Relations

From: Scott Wallis [mailto:swallis2008@live.com]

Sent: Friday, July 14, 2017 6:02 PM

To: Scott, David E <scottde@purdue.edu>

Subject: Dicamba label

I'm a farmer from Gibson county. We agree completely that all dicamba products should become restricted use herbicides. We also would be in favor of a more restrictive label that banned all dicamba application after June 1. We have been spraying dicamba on our corn since it was available with little to no problems. But it is different now a large percentage of farmers can plant corn and beans at the same time. Which means there is a larger number of bean acres up earlier in the season. Now with extend beans the spraying window for dicamba has been stretched way out allowing for much higher temps at application time this raising the risk of off site damage. It is also a proven fact that damage later in the beans life cycle is much more likely to cause yield loss. Thanks for this opportunity to express our concerns.

Scott Wallis
Wallis Farms
Princeton Indiana
812-304-0488



July 14, 2017

WRITER'S DIRECT NUMBER: (317) 236-5981
DIRECT FAX: (317) 592-4889
INTERNET: mark.shublak@icemiller.com

David Scott
Secretary
Indiana Pesticide Review Board
175 South University Street
West Lafayette, IN 47907

Dear David:

Recently, the IPRB has proposed to classify dicamba herbicides as a state Restricted Use Pesticide ("RUP") for Indiana even though two kinds of the dicamba herbicide, XtendiMax with VaporGrip technology and Engenia Herbicide, have already been registered in Indiana. Moreover, the United States Environmental Protection Agency had previously made the determination, following an extensive study, to accept the registration for the two dicamba-based herbicides as non-restrictive. We are concerned that the IPRB has acted hastily in initiating the rulemaking process, rather than waiting for substantiated data in Indiana to ensure the implementation of an evidence-based policy.

Indiana growers are just now getting seeds into the ground following a wet spring; thus, the initial application of the new dicamba-based herbicide products will not occur for some time yet. There is no indication that Indiana growers will not properly use dicamba products, or that there will be problems with dicamba in Indiana. The IPRB should follow in the footsteps of the EPA by observing data from several growing seasons, rather than prematurely enforcing restrictions based on conjecture from problems in other states.

Over the past year, it seemed that worst-case dicamba scenarios from southern states were highly publicized across the country. Often missing from these stories was the vital point that the dicamba product being applied was actually the older, unapproved formulation of dicamba. In fact, the newly approved dicamba products had not yet been approved, nor had they been made available. Moreover, at the last Pesticide Review Board, one sensitive crop processor provided testimony that the reports of dicamba drift damage had been decreasing. Additionally, there were zero reports of the last two years. Not only does this show that reports of dicamba as damaging in Indiana are infrequent, but it also illustrates that growers obviously understand the proper protocol and application techniques for dicamba.

At a time when growers are facing a number of challenges including increased weed resistance, the need to produce more using less land, and fluctuating commodity prices, growers vitally need new tools to help them control weeds and maximize crop yield potential. New technologies, such as XtendiMax with VaporGrip Technology, can provide growers the benefits of both conventional and in-crop use and include the latest advancements, giving another choice to help Indiana growers combat troublesome weed. Purdue Extension weed specialist, Bill Johnson, has stated that dicamba-based herbicides are "a sorely needed tool in controlling glyphosate, ALS, and PPO resistant broadleaf weeds in soybeans."

Given the need for this technology and the opportunity growers in all other major soybean producing states will have to utilize it this year, we respectfully encourage the IPRB to halt the rulemaking process. Rather than restricting the newer, less-volatile versions of dicamba, only the older version should be restricted. Taking this approach would provide additional lead time to communicate and implement changes, which may reduce the risk of grower confusion. This approach would also offer growers the chance to demonstrate that they can responsibly use the technology according to the approved label.

We understand the extensive time and evaluation that Indiana and dicamba focus groups have put into reviewing and considering new technologies over the past several years, and we appreciate their work and the chance to partner with them. However, we remain concerned that the IPRB has implemented a policy that will prove injurious to growers in the long-term. As we move ahead with new innovations for Indiana growers, we look forward to continued discussions as we work to best benefit all Hoosiers.

Sincerely yours,

ICE MILLER LLP



Mark Shublak

On Behalf of ACI

Dave Scott,

I am full support of dicamba being a Restricted Use Pesticide. I have read the labels of these new dicamba pesticides for soybeans and they are very restrictive and next to impossible to follow. I have seen 2 fields where I suspect dicamba has been used and seen damaged soybeans next to them. In both incidents it appeared the label was not followed, it looks like there was no buffer strip.

This is going to be very hard to police and farmers are not going to want to leave buffer strips.

Hal Truax

--

Hal Truax
Truax Family Farms, Inc.
6759 N County Road 100 E
Pittsboro, Indiana 46167
317-892-4130
truaxhal@gmail.com

Hello, my name is Shannon Barr and currently i am experiencing dicamba damage from a neighbor. I have reported the situation to the State Chemist and just wanted to comment that the number of complaints is probably terribly under represented. I have seen several other neighbors who have been impacted by the same neighbor I reported who have significant damage (some far worse than mine) who do not want to report the damage. Many of them, approximately 5, are older farmers who dont know the process or just dont want to "stir things up" with a neighbor. I believe it is your responsibility to look out for these people as well as those of us who are either less tolerant or more technologically experienced. My personal experience is monsanto rushed this product out trying to be the top dog chemical company and hasnt done enough to prove the chemical dicamba can be less volatile. Their hopes of finding the next "roundup" has clouded the proper procedures for research. Due to this and the unheard affected masses the State of Indiana should take measures to either highly restrict or completely ban the chemical dicamba. Thank you.

Shannon Barr, 3471 N Royal Center Pike, Logansport IN 46947.

TO: Indiana State Chemist
FROM: Middlesworth Farms
RE: Dicamba damage in soybeans
DATE: July 20, 2017

Middlesworth Farms would like to officially file a complaint in a matter of dicamba movement from a neighboring field into our soybean field. Xtendimax has been widely advertised as a safer product with the introduction of the vapor grip technology. It has become very apparent that the chemical has vaporized and crossed the road, and into our field 23 days after application. The loss of yield is unknown at this time, but that is not the entire point of the complaint. Dicamba is a dangerous product and cannot be counted on to stay where it is applied. It has also become apparent in real world applications that the rules to enhance safety such as buffers and wind restrictions simply are not being followed to the disappointment of many innocent victims. Fortunately for us, the wind was blowing away from our crop because of a nearby tomato field and the high risk to a specialty crop, but this incident proves that the new formulations of dicamba, such as Xtendimax, are not safe. The states of Arkansas, Missouri, and now Tennessee have realized the problems with dicamba and have either banned it's use or severely restricted its application. Indiana should join in to protect innocent victims from chemical trespass from a product that is demonstrably uncontrollable.

Attached is a photo of our beans taken weeks after the application was made. The loss has been officially investigated and we are certain it will be verified by the diligence and professionalism of your office. Please help us protect Indiana agriculture from this chemical and allow all crops to thrive in our state, not just Dicamba tolerant.

Dicamba Drift and Volatility issues experienced by a farmer in Clinton County,
Indiana

Sirs,

Thank you in advance for dedicating the time to read this. I hope another farmer in Indiana or elsewhere never again shares my experience.

I planted a 72 acre field of NON Xtend tolerant soybeans on April 18th. My field, on the East side of a paved (N-S) county road, stretches ½ mile West to East. On the West side of the same county road my neighbor planted Monsanto's Xtend soybeans around the same time.

On June 27th, my neighbor sprayed his Xtend soybeans with a Dicamba based herbicide. The wind was blowing from the SW to the NE at 4-7 mph. (well within label), however, he DID NOT leave the required 110" buffer area so my soybean crop, downwind, took a HEAVY dose of Dicamba.

I contacted my fertilizer dealer. He told me my neighbor purchased the XtendaMax and all the accepted additives from them, so I have strong reason to believe XtendaMax was the product sprayed. I contacted my neighbor on July 5th and confronted him on the damage in my field. He immediately said it wasn't his fault and claimed a different wind direction.

I was given the phone # of Monsanto's Xtend complaint line by my fertilizer dealer and called in a complaint. After researching my past history with Monsanto, through my Tech Number (assigned to me by Monsanto), I was told, by the lady on the Xtend Phone line, I was a good Monsanto customer and they might send someone out. First they wanted the applicator to call in. I gave the applicator, my neighbor, the info and he called in Thursday, July 6th around 9:00 a.m. Monsanto got a field adjustor out there to visit with the applicator that same afternoon, and never contacted me, the one with the injured crop. Needless to say, I was furious. The Monsanto adjustor finally came out the following Monday morning. We drove completely around the field several times to show him the drift pattern. Monsanto, on Thursday, with the applicator, and with no entry into my field, blamed the farmers who farm the 2 cornfields, one to the south and the other one ½ mile to the East for the damage to my crop. The drift damage to the soybeans clearly shows NO movement from the cornfields. (I hired a drone operator to video the drift pattern in case I need to prove it later)

I subsequently contacted the Indiana Office of the State Chemist and filed a complaint. Brian Baked, from IOSC, visited the field Tuesday, July 10th. Symptoms on the soybean leaves were still getting worse at that time. Visual injury was evident from the road clear to the East fencerow, ½ miles downwind. We have had several rain events, tropical type heat and humidity, and windy conditions with the wind predominately coming from the West, blowing East over my field for the previous week.

On July 12, a farm manager was in the field with me and noticed clear "Growth Regulator" injury on a very young Maretail plant, 200' into my field from the road. This plant wasn't germinated during the spray drift event, so VOLATILIZATION of the Dicamba almost 2.5 weeks after application was still injuring my field.

I am composing this letter on July 27th. The soybeans have been impacted for a month and are still showing injury in roughly 1/3rd of the field closest to the road and the field of soybeans sprayed with a Dicamba product.

With combine yield monitors, the extent of the damage will be quantified. The problem is in the label where Monsanto excludes themselves from any performance problems. What this means is I will have to try to get compensation from my neighbor. I have documented this problem with the knowledge I will end up in court battling an insurance company or my neighbor to receive compensation for income loss due to this terrible product.

I have some additional comments;

1. Had I not videoed, with my cell phone, my neighbor spraying in the field on the date I claimed above, it would be his word against mine because, he told Brian Baker, from IOSC he sprayed on June 22. That day had a slightly more favorable wind direction for HIM. Interestingly, my neighbor didn't read the label because it clearly states Xtendamax can't be sprayed 24 hours before a rain event. On June 22 we had a weather forecast of a 70% chance of rain on the 23rd of June and in fact received .4". The problem is one of integrity. If my neighbor lies about the day he sprayed, how many other operators did the same?

2. Monsanto is required to submit all Dicamba complaints to the EPA as per the registration requirements. When I called Monsanto to see when I would receive a report from their field adjuster, (which he said I would receive) Charles, from Monsanto said I WOULD NOT RECEIVE ANYTHING and he didn't know why I was told that. When I asked Charles how would I know the info gathered in MY field would be shared with the EPA, he said "I guess you won't know that". Here is the number Monsanto assigned to my case. 170014890

3. Most people don't understand the potency of the new formulation being sprayed on soybeans.

Many farmers have used Dicamba for years in corn with no big problems with drift and volatilization; however, the corn label puts applicators in a corn crop very early growth stage on corn which corresponds to soybeans that are very small or not even planted yet. Compare to when it is being sprayed on soybeans today. In my case, we were way past the Vegetative growth and were at R3 to R4 Growth stage. My soybeans are (were) setting pods and trying to continue to grow and put on more blooms for more pods. The injury restricted that process for effectively the month of July so far.

Additionally, the rate of Dicamba being applied is (depending on which of the 2 rates one selects to use) THREE to FOUR (3x to 4x) times the labeled rate for corn. This is a potent shot being sprayed at a time when the Dicamba molecule is most susceptible to Volatilizing and moving off target. This "cloud" can move for miles depending on the wind during the temperature inversion.

4. Another neighbor sprayed a 240 acre field .3 miles to the west of my house. I have photos documenting the distinctive parallel vein orientation of the affected leaf

tissue on 3 ornamental trees in our yard. This is NOT from drift. This the volatilization of a very unstable chemical causing the damage.

5. I am at a crossroads in my farming operation. In order to be profitable, I must submit an "early seed order" in August to receive the greatest discounts off list price. I would like to purchase other technology like Enlist (2-4-D) or Liberty, or just straight Round-up tolerance for next year. I am afraid that without MAJOR REVISIONS in the existing label for Xrendamax, or Enginia (BASF Dicamba product) I may be forced to purchase Monsanto's Xtend beans so I can raise a soybean crop with no Dicamba damage and subsequent yield loss.. THIS QUANDRY MAKES ME FURIOUS!

Any label changes will be so delayed we will lose money due to increased seed costs by waiting, so I am forced to place orders for 2X the soybean seed I plan to use (100 % Dicamba tolerant, and 100% other technology) so I am covered in the event there is no significant label changes.

6. I am deeply troubled with Monsanto, BASF, and the EPA. To allow companies to register a label for such a radicle compound as Dicamba, and then Exclude themselves from any performance issues is very disturbing. This tells me they knew there would be issues with this product. Every article I read that instructs a farmer like myself on how to gain compensation for the damage only recommends talking to the "applicator". Nowhere are Monsanto or BASF held accountable. So now I am going to ask a farmer neighbor to write me a check for thousands of dollars to cover my loss. I predict he will say "go jump in a lake". I will be forced to sue him for damages. Then, in the future, I will be at odds with a neighbor for the rest of our lives while the Chemical companies pocket profits from the chemical sales and, in Monsanto's case, the ROYALTIES for their Xtend trait that I don't want but have to use!!!!!!

7. Temperature inversions cause this unstable Dicamba chemistry to convert to a gas and leave the field moving off target for miles depending on the wind velocity. Missouri has set up 7 weather stations in June and documented 5 days when there wasn't a temperature inversion some time during the day. Most inversions occurred before 10 a.m. and after 4 p.m. according to their June 2017 data. So as you can see, there is very little window to apply this product without it leaving the targeted field. There is really no way to make label restrictions for such a nebulous environmental condition that seems to be happening on a daily basis.

In conclusion

The registration of this chemistry needs to be reviewed and re-evaluated in light of all the evidence of crop injury coming in from all over the soybean growing states. It would not be a bad thing for the registration to be pulled until there is a formulation that doesn't drift or VOLATILIZE. (That's the bigger problem)

If no one can stand up to the big corporate money and lawyers and ban the application, then severely restricting when these products can be sprayed is the

next step. Temperature inversions cause instability. The earlier the product is sprayed in the spring, the less likely there are inversions,

so;

Restrict the application based on location in the state. In Indiana, we have a wide window for planting soybeans from North to South with the South planting 30-45 days earlier in the spring than the North. Setting a date after which no application is allowed based on the location in the state would prevent a lot of farm crops from being damaged. It may still impact non-farm areas with their ornamental trees and flowers.

I am very hopeful there are meaningful changes made for the use of this Dicamba chemistry in Indiana and the Nation soon. The consequences of in-action, or very little label change will result in lawsuits, poor neighbor relations, a non-farm public that will become agitated over the movement of this chemistry, and money in the pockets of giant corporations like Monsanto and BASF and lower profits for farmers of Indiana who have damages and/or who are forced to "pay up" for Monsanto's dicamba tolerant seed..

Thank you again for taking the time to hear my story.

Respectfully,

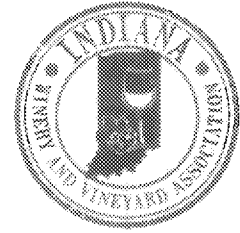
Lewis Flohr

Certified Crop Advisor, Certified Crop Specialist, Certified Soil Scientist,

And

Farmer in Clinton County, Indiana

July 29, 2017



Mr. David Scott, Secretary
Indiana Pesticide Review Board
175 South University Street
West Lafayette, IN 47907-2063

Dear Mr. Scott,

Please accept this letter as evidence of our support for the proposed rule #17-180 to add dicamba to the list of state restricted use pesticide products.

The Indiana Winery and Vineyard Association is an association of wineries and vineyards in Indiana whose membership includes dozens of grape growers across the state. To date, many of our growers – both in the north and the south – have experienced herbicide drift issues from suspected dicamba use as well as other herbicides. They are unfortunately seeing significant losses in 2017.

Our members' operations are much smaller than the total acreage of other agricultural commodities in the state. However, the retail value of our crops is considerably higher, making losses due to herbicide drift more critical. Any effort to monitor dicamba's use and further understand its impact on specialty crops is something that we strongly support.

Thank you for your attention to this matter.

Sincerely,

Jim Butler

Jim Butler
Owner, Butler Winery & Vineyards
Treasurer, Indiana Winery & Vineyard Association

125 West Market Street, Suite 300 Indianapolis IN 46204
info@indianawinevine.org ~ www.indianawinevine.org

From: Larry Hancock [<mailto:bannerstone59@yahoo.com>]

Sent: Monday, August 07, 2017 7:14 PM

To: Scott, David E <scottde@purdue.edu>

Subject: Dicamba

The damage caused by application of spray on dicamba soybeans has yet to be known. I have observed some beans grown on sandy soil where the damage is substantial. While the weather was good for drifting the chemicals, evidently the chemicals drift easily. I have seen damage for a few hundred yards into the next field over. I have seen where applicators that followed the label and there was minimal damage to neighboring fields. I have seen where the label was not followed and damage was a lot more than the neighbor will tolerate. Monsanto and the review board should have both known the risk of dicamba bean spray. They had a good example from last year. I know the new technology has slowed drift, but we are talking about an extremely volatile chemical. I do not appreciate my crops being damaged and I do not appreciate the loss of income. I suggest the review board take action to correct the situation. I hear of the possibility of making the chemicals restricted use. I am not sure how that will help much. The people who do the spraying the chemical have a license. I do not think Changing the label will change their behavior. I would much prefer letting only commercial applicators spray dicamba beans. They are much more responsible people. They are much more likely to cause minimal damage without causing loss of a good technology. Another step could be limiting the timing of application. Say, limiting spraying after the end of May. At least there would be time for damaged beans to recover.

Larry Hancock Sandborn, Indiana 812-694-7198.

From: Bill Brocksmith [mailto:bbrocksmith@myfrontiermail.com]

Sent: Monday, August 28, 2017 12:16 PM

To: Saxton, George Norman <saxton@purdue.edu>

Subject: RE: dicamba issues

To Whom it May Concern:

I am Bill Brocksmith, we farm approx. 4000 acres in Knox and Sullivan counties. I have no ties to any seed or chemical company.

After seeing severe to maybe moderate damage, from dicamba, to about 40 to 50% of our 2000 acres of beans I feel the need to voice my and others concerns about dicamba.

I did not report my friend and neighbor to the State Chemist, and feel dicamba could put a strain on relationships in our small rural areas.

The following are a few points i would like to share

-I do not want to be forced into paying for technology I don't need. If Dicamba is allowed in 2018 we may be in essence forced to use it to avoid damage.

We have worked very hard at controlling water hemp and other weeds by other means.

-We were told by chemical reps. That this new formulation of dicamba would not drift as bad or would not volatilize,

I can show you where it moved .75 to 1. mile from targeted field.

-I am proud graduate from Purdue so I have non ag people ask me about issues they hear regarding agriculture.

One of the toughest questions this summer has been. If dicamba can volatilize into the air and drift up to, or more than a mile away and cup bean leaves

What does that do to my lungs? I would like a good answer to that myself.

-Unfortunately we in agriculture shoot ourselves in the foot too often, if we are not careful with this product we are going hurt how safe our products are perceived to the general public.

Thank you,

Bill C. Brocksmith
812 830-8920 cell



INDIANA PESTICIDE REVIEW BOARD

Abbreviated 151st Meeting Minutes

The Indiana Pesticide Review Board (IPRB) met on August 30, 2017, at the Beck Agricultural Center, 4550 U.S. Highway 52 West, West Lafayette, Indiana, 47906-9286. Agenda items for that meeting included the following.

1. Approval of the meeting agenda
2. Approval of previous meeting minutes (June 1, 2017)
3. Review of cases involving civil penalties since the last meeting
4. Report from IPRB work group drafting guidance/options for consistently and equitably addressing penalty mitigation provisions under the civil penalty rule (357 IAC 1-6)
5. The history & current priorities & activities of Purdue Pesticide Programs
6. What we know about 2017 dicamba use & related activities to date
7. Review of OISC's Enforcement Response Policy for 2017
8. Rulemaking status of State RUP classification of all dicamba containing agricultural herbicides...review of public hearing comments & final adoption
9. Preparing for dicamba use in 2018

At the meeting, the IPRB voted unanimously to adopt as final the proposed rule to classify as State Restricted Use Pesticides, all agricultural use dicamba containing herbicides registered for sale and use in Indiana. The final adopted rule, with minor editorial changes highlighted in yellow, is as follows:

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

LSA Document # 17-180(F)

Amends 357 IAC 1-17-1 to expand the list of state restricted use pesticide products to include certain herbicides containing the active ingredient dicamba. Effective 30 days after filing with the Publisher.

357 IAC 1-17-1

SECTION 1. 357 IAC 1-17-1 IS AMENDED TO READ AS FOLLOWS:

357 IAC 1-17-1 State restricted use pesticide products

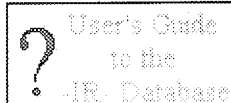
Authority: IC 15-16-4-50

Affected: IC 15-16-4; IC 15-16-5

Sec. 1. Pesticide products defined by the following categories or active ingredients are designated and classified as restricted use pesticides in the state of Indiana:

- (1) Any pesticide classified by the U.S. Environmental Protection Agency as a restricted use pesticide.
- (2) All formulations containing methomyl (Chemical Abstracts Service Reg. No. 16752-77-5).
- (3) Any dicamba containing pesticide product ~~bearing a label indicating the~~ herbicide that:
 - (A) contains a dicamba active ingredient concentration greater than or equal to six and one-half percent (6.5%); and
 - (B) is intended for agricultural production uses but:
 - (i) does not also contain 2,4-D as an active ingredient; or
 - (ii) is not labeled solely for use on turf or other non-agricultural use sites. *(Indiana Pesticide Review Board; 357 IAC 1-17-1; filed Sep 11, 2012, 2:41 p.m.; 20121010-IR-357120135FRA)*

INDIANA GENERAL ASSEMBLY

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IR-025050010NIA**LSA Document #**
(Documents since July 2,
2006)[Go](#)

Example: 06 - 121

-IR- Database: Indiana Register**Register Documents associated with
LSA Document number 17-180**(Only documents posted after July 2, 2006 will be
found.)**Title 357 Indiana Pesticide Review Board****DIN: 20170607-IR-357170180EIA** ([HTML](#) - [PDF](#))

Type: EI Posted: 06/07/2017 LSA Doc #17-180 Title 357

**Economic Impact Statement LSA Document
#17-180****DIN: 20170607-IR-357170180PHA** ([HTML](#) - [PDF](#))

Type: PH Posted: 06/07/2017 LSA Doc #17-180 Title 357

Notice of Public Hearing LSA Document #17-180**DIN: 20170607-IR-357170180PRA** ([HTML](#) - [PDF](#))

Type: PR Posted: 06/07/2017 LSA Doc #17-180 Title 357

**Amends 357 IAC 1-17-1 to expand the list of
state restricted use pesticide products to include
certain herbicides containing the active
ingredient dicamba. Effective 30 days after filing
with the Pub...****DIN: 20170412-IR-357170180NIA** ([HTML](#) - [PDF](#))

Type: NI Posted: 04/12/2017 LSA Doc #17-180 Title 357

**OVERVIEW: Amends 357 IAC 1-17 to expand
the list of state restricted use pesticide products
to include certain herbicides containing the
active ingredient dicamba. Effective 30 days
after filing with...**

IAC Cite

- IAC - Go

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example: 45 - IAC - 1

Indiana Code Cite

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Chapter*, and Section*
* = optional
example: 4 - 22 - 8 - 2

EXECUTIVE SUMMARY

357 IAC 1-17-1

Name of Agency: Indiana Pesticide Review Board
Title of the Rule: State Restricted Use Pesticide Products
LSA Document: #17-180

Digest of the Subject Matter:

Amends 357 IAC 1-17-1 to expand the list of state restricted use pesticide products to include certain herbicides containing the active ingredient dicamba. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses:

The proposed rule will not impose requirements or costs on small businesses under IC 4-22-2.1-5. This rule will simply restrict the distribution and use of an estimated fewer than fifty agricultural herbicides containing dicamba to pesticide users and distributors already credentialed and regulated by the State Chemist. Because the requirements in this rule will apply only to higher concentration agricultural weed control products but not lower concentration turf weed control products, and because there are currently numerous alternative herbicides that could be used in place of dicamba-containing products, neither pesticide dealers and distributors nor pesticide applicators or application businesses will be impacted fiscally.

Contact Person: David E. Scott, Secretary
Indiana Pesticide Review Board
(765) 494-1593
scottde@purdue.edu

Following due notice, a public hearing was held on July 6, 2017, at 10:00 a.m., William H. Daniel Turfgrass Research and Diagnostic Center, 1340 Cherry Lane, West Lafayette, Indiana, to receive comment from the public regarding the proposed rule #17-180. The hearing record for this proposed rule remained open for public comment through August 29, 2017.


Prepared by: David E. Scott